

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HJR 7037 CS PCB JU 06-02 Extraordinary Vote to Amend Constitution to Increase or Impose Taxes, Fees, or Significant Financial Impact  
**SPONSOR(S):** Judiciary Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SJR 1436

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Committee	12 Y, 2 N	Thomas	Hogge
1) Finance & Tax Committee	7 Y, 1 N, w/CS	Levin	Diez-Arguelles
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The joint resolution proposes changes to Section 7 of Article XI of the Florida Constitution. Article XI addresses amendments to the constitution, and Section 7 specifically addresses tax or fee limitations. The joint resolution provides that the existing two-thirds vote required for voters to approve any constitutional amendment *imposing* a new state tax or fee be expanded to include any constitutional amendment or revision *increasing* an existing state tax or fee. The joint resolution clarifies the definition of “existing state tax or fee” to be any tax or fee that produces revenue to state government.

The joint resolution also requires that any proposed amendment or revision, regardless of the source of the proposal, that results in significant additional spending by state government in an amount greater than one-tenth of one percent of the total state budget as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the calendar year prior to the year of the election in which such proposed amendment or revision is considered, must pass by at least two-thirds of those electors voting in the election in which such proposal is considered. Based on the FY 2005-06 budget, significant additional spending would be any amount greater than approximately \$63 million.

The joint resolution does not appear to have any fiscal impact on state or local government other than those costs related to placing the joint resolution on the ballot and publishing required notices. The Department of State estimates non-recurring publication costs of approximately \$50,000 for FY 2006-07.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect on January 2, 2007.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

##### **Ensure lower taxes**

Amendments to Florida's Constitution which increases taxes or fees or result in significant additional spending will require a two-thirds vote of the electorate in order to become effective.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Revision or Amendment to the Constitution**

Amendments to Florida's Constitution can be proposed by five distinct methods: 1) joint legislative resolution, 2) the Constitutional Revision Commission, 3) citizen's initiative, 4) a constitutional convention, or 5) the Taxation and Budget Reform Commission.<sup>1</sup> Depending on the method, all proposed amendments or revisions to the constitution must be submitted to the electors at the next general election 1) held more than ninety days after the joint resolution, 2) 180 days after the report of the Constitutional Revision Commission or Taxation Budget Reform Commission, or 3) for citizen initiatives, if all the required signatures were submitted prior to February 1 of the year in which the general election is to be held.<sup>2</sup>

A proposed constitutional amendment or revision is adopted upon approval of a majority of electors voting on the proposal.<sup>3</sup> However, a new State tax or fee proposed by constitutional amendment or revision must be adopted by at least two-thirds of those voting in the election in which such amendment is considered.<sup>4</sup> Section 5, Article XI, of Florida's Constitution was amended in 2002 requiring the Legislature to provide a statement to the voters regarding the probable financial impact of any amendment proposed by initiative. In response, the Legislature created the Financial Impact Estimating Conference to review, analyze, and estimate the financial impact of amendments.<sup>5</sup>

##### **Effect of Joint Resolution**

The joint resolution proposes changes to Section 7 of Article XI of the Florida Constitution, relating to tax or fee limitations in amendments or revisions. The joint resolution provides that the existing two-thirds vote required for voters to approve any constitutional amendment or revision *imposing* a new state tax or fee be expanded to include any constitutional amendment or revision *increasing* an existing state tax or fee. The joint resolution clarifies the definition of "existing State tax or fee" to be any tax or fee that produces revenue for state government.

The joint resolution also requires that any proposed amendment or revision, regardless of the source of the proposal, that results in significant additional spending by state government in an amount greater than one-tenth of one percent of the total state budget as established by the General Appropriations Act approved by the Governor, for the state fiscal year ending in the calendar year prior to the year of the election in which such proposed amendment or revision is considered, must pass by at least two-thirds of those electors voting in the election in which such proposal was considered. Based on the FY 2005-06 budget, significant additional spending would be any amount greater than approximately \$63 million.

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<sup>1</sup> See Art. XI, ss. 1-4 & 6, Fla. Const.

<sup>2</sup> See Art. XI, ss. 2, 5, and 6, Fla. Const.

<sup>3</sup> See Art. XI, s. 5(e), Fla. Const.

<sup>4</sup> See Art. XI, s. 7, Fla. Const.

<sup>5</sup> See s. 100.371, F.S.

The joint resolution further provides that the determination of whether a proposed amendment or revision requires significant additional spending by state government will be made and certified in accordance with general law. The joint resolution also deletes obsolete language in this section of the state constitution relating to items on the November 8, 1994 ballot.

The joint resolution does not contain a specific effective date. Therefore, if adopted by the voters, it will take effect January 2, 2007.<sup>6</sup>

Below is a list of the approval percentages of some constitutional amendments in the past that might have required a two-thirds vote had this joint resolution been law.

TITLE	SOURCE	YEAR	APPROVAL PERCENTAGE
High Speed Rail	Initiative	2000	52.7%
Class Size	Initiative	2002	52.4%
Voluntary Pre-Kindergarten	Initiative	2002	59.2%
Article V – Local Funding of State Courts	Revision Commission	1998	56.9%

### Appearance on the Ballot

If enacted, the proposed constitutional amendment will appear on the November 2006 ballot as follows:

**TWO-THIRDS VOTE FOR AMENDMENT INCREASING STATE TAX OR FEE OR RESULTING IN SIGNIFICANT ADDITIONAL SPENDING.—** Under this measure proposing to amend the State Constitution, a proposed amendment or revision to the State Constitution that increases an existing state tax or fee would have to be approved by at least two-thirds of those voters voting in the election in which the amendment or revision is considered. For the purposes of this measure, “existing state tax or fee” means any tax or fee that produces revenue to state government. This measure would require that a proposed amendment or revision to the State Constitution that would result in significant additional spending by state government must be approved by at least two-thirds of those voters voting in the election in which the amendment or revision is considered. For the purposes of this measure, “significant additional spending” means additional spending in any state fiscal year prior to and including the first state fiscal year of full implementation, in an amount greater than one-tenth of one percent of the total state budget, as established in the General Appropriations Act approved by the Governor, for the state fiscal year ending in the calendar year prior to the year of the election in which such proposed amendment or revision is considered. The determination of whether a proposed amendment or revision would result in significant additional spending by state government would be made and certified in accordance with general law. This measure adds to an existing provision of the Florida Constitution, passed by Florida voters in 1996, that currently applies the same two-thirds vote requirement only to a proposed amendment that imposes a new state tax or fee. All other proposed amendments or revisions presently must be approved by only a simple majority of those voting on the proposal. The measure also makes conforming changes in this section of the State Constitution and repeals obsolete provisions relating to items on the November 8, 1994, ballot.

<sup>6</sup> Art. XI, s. 5(e), Fla. Const., provides: “If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”

C. SECTION DIRECTORY:

The legislation is a joint resolution proposing a constitutional amendment and, therefore, does not contain bill sections. The joint resolution proposes to amend Section 7 of Article XI of the Florida Constitution relating to amendments and revisions.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

**Non-Recurring**

**FY 2006-07**

General Revenue

Publication Costs

\$50,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

While this proposal does not have a direct economic impact on the private sector, requiring a higher voting threshold for proposed amendments and revisions that increase a state tax or fee or impose a significant financial impact on state government may affect the likelihood of success of future proposals. See Effect of Proposed Changes, Section I.B. of this analysis, for voting results on past amendments that might have been affected had this joint resolution been in effect at the time of their respective elections.

D. FISCAL COMMENTS:

The Florida Constitution requires publication of a proposed amendment or revision to the constitution in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held.<sup>7</sup> The Division of Elections with the Department of State estimates that the non-recurring cost of compliance would be approximately \$50,000 in FY 2006-07.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision relates only to general bills and therefore would not apply to this joint resolution.

<sup>7</sup> See Art. XI, s. 5(c), Fla. Const.  
STORAGE NAME: h7037b.FT.doc  
DATE: 3/31/2006

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The joint resolution does not raise the need for rules or rulemaking authority or direct an agency to adopt rules.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Amendments or revisions to the Florida Constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.<sup>8</sup> Passage in a committee requires a simple majority vote. If the joint resolution is passed in this session, the proposed amendment would be placed before the electorate at the 2006 general election, unless it is submitted at an earlier special election pursuant to a law enacted by an affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.<sup>9</sup> Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.<sup>10</sup>

A similar proposal to this joint resolution passed the House of Representatives in the 2005 legislative session,<sup>11</sup> but was never considered by the Senate. Last year's proposal differed in that it applied to constitutional amendments or revisions that increased local taxes and fees, as well as to those that increased state taxes or fees and those that imposed a significant financial impact on state or local governments. This joint resolution only applies to constitutional amendments or revisions that increase state taxes or fees and those that impose a significant financial impact on state government. Last year's proposal passed unanimously out of the Judiciary Committee and the Justice Council, and by a 9 to 1 vote in the Ethics and Elections Committee.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 31, 2006 the Finance and Tax Committee adopted an amendment that clarified the definition for a new state tax or fee to be a tax or fee that produces revenue to the state government. The criteria requiring the two-thirds vote was changed from "significant financial impact" to "significant additional spending."

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<sup>8</sup> See Art. XI, s. 1, Fla. Const.

<sup>9</sup> See Art. XI, s. 5(a), Fla. Const. The 2006 general election is on November 7, 2006.

<sup>10</sup> See Art. XI, s. 5(c), Fla. Const.

<sup>11</sup> See CS/HB 1741 (2005)